

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

CENTER FOR BIOLOGICAL DIVERSITY, a)
non-profit corporation,)
)
Plaintiff,)
v.)
)
MICHAEL CHERTOFF, in his official capacity)
as Secretary of the U.S. Department of Homeland)
Security, REAR ADMIRAL PAUL F.)
ZUKUNFT, in his official capacity as Commander)
of U.S. Coast Guard District Eleven, and UNITED)
STATES COAST GUARD,)
)
Defendants.)

Case No. 08-CV-02999 MMC

[PROPOSED] ORDER

Pursuant to Federal Rule of Civil Procedure 56, and in consideration of Plaintiff's Motion for Summary Judgment, the responses and replies thereto, and having found that Defendants, Michael Chertoff, Secretary of the U.S. Department of Homeland Security, Rear Admiral Paul F. Zukunft, Commander of U.S. Coast Guard District Eleven, and the United States Coast Guard, have violated Section 7(a)(2) of the Endangered Species Act, 16 U.S.C. § 1536(a)(2), by failing to consult with the National Marine Fisheries Service regarding the impacts of Defendants' regulation of ship traffic on threatened and endangered species, see, e.g. Turtle Island Restoration Network v. Nat'l Marine Fisheries Serv., 340 F.3d 969 (9th Cir. 2003), the Court ORDERS as follows:

IT IS ORDERED that Plaintiff's Motion for Summary Judgment is GRANTED;

IT IS FURTHER ORDERED that Defendants carry out all necessary steps, including preparation of a biological assessment, to initiate Section 7 consultation with the National Marine Fisheries Service regarding the impacts to threatened and endangered species from

1 Coast Guard regulation of ship traffic off the California coast, including designation of traffic
2 separation schemes, within sixty (60) days of this Order;

3 IT IS FURTHER ORDERED that the parties meet and confer to determine whether any
4 additional relief is necessary and proper to reduce the risk to listed species from vessel traffic
5 until such time as consultation with National Marine Fisheries Service has been completed. The
6 parties shall file a status report with the court within thirty (30) days of this Order regarding the
7 issue of further relief;

8 IT IS FURTHER ORDERED that Plaintiff is the “prevailing party” in this litigation and
9 shall file any motion for attorneys’ fees and costs within sixty (60) days of this Order;

10 IT IS FURTHER ORDERED that the Court will retain jurisdiction for the purpose of
11 ensuring compliance with this Order and to resolve any motion by Plaintiff for attorneys’ fees
12 and costs.

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14 IT IS SO ORDERED.

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16 DATED this _____ day of _____ 2008

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20 _____
21 Honorable Maxine M. Chesney
22 United States District Court Judge
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